

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	File No. EB-02-TC-089
)	
Comcast Cable Communications , Inc.)	CUID No. MD0172 (Prince George's County)
)	
Petition for Reconsideration)	

ORDER

Adopted: July 16, 2002

Released: July 17, 2002

By the Chief, Enforcement Bureau:¹

1. In this Order, we consider a petition for reconsideration ("Petition")² of Cable Services Bureau Order, DA 98-1558 ("Prior Order"),³ filed with the Federal Communications Commission ("Commission") by the above-referenced operator ("Operator").⁴ The Prior Order resolved complaints filed against the rates charged by Operator for its cable programming services tier ("CPST") in the community referenced above and found Operator's CPST rates to be unreasonable from May 1, 1995 through January 31, 1998. In this Order we grant Operator's Petition and modify the Prior Order.

2. Under the provisions of the Communications Act⁵ that were in effect at the time the complaints were filed, the Commission is authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act")⁶ and the Commission's rules required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber or local franchising authority ("LFA"). The Telecommunications Act of 1996 ("1996 Act"),⁷ and the Commission's rules implementing the legislation ("Interim Rules"),⁸ required that a complaint against the CPST rate be filed with

¹ Effective March 25, 2002, the Commission transferred responsibility for resolving cable programming services tier rate complaints from the former Cable Services Bureau to the Enforcement Bureau. *See Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau, Reorganization of the International Bureau and Other Organizational Changes*, FCC 02-10, 17 FCC Rcd 4672 (2002).

² Operator originally filed its petition as an application for review. However, by letter dated May 21, 2002, Operator requested that we treat its application as a petition for reconsideration.

³ *See In The Matter of Jones Communications of Maryland, Inc.*, DA 98-1558, 13 FCC Rcd 17685 (CSB 1998).

⁴ The term "Operator" includes Operator's successors and predecessors in interest.

⁵ 47 U.S.C. §543(c) (1996).

⁶ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁷ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁸ *See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 5937 (1996).

the Commission by an LFA that has received more than one subscriber complaint. The filing of a valid complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.⁹ If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.¹⁰

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.¹¹ Operators may file an FCC Form 1210 to justify quarterly rate increases based on the addition and deletion of channels, changes in certain external costs and inflation.¹² Operators may justify their rates on an annual basis using an FCC Form 1240 to reflect reasonably certain and quantifiable changes in external costs, inflation, and the number of regulated channels that are projected for the twelve months following the rate change.¹³ Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.¹⁴

4. In the Prior Order, the Cable Services Bureau denied a request by Operator to include certain rate adjustments in its maximum permitted rate ("MPR") because Operator failed to file with the Commission the FCC Form 1210 in which it calculated the adjustments. Operator asserts that it did, in fact, include the disputed adjustments in its actual CPST rate increases and that its subsequent rate filings incorporated the adjustments in their calculations. Operator argues that it should have been clear when the Cable Services Bureau reviewed the filings that the FCC Form 1210 that included the adjustments was missing. Operator subsequently filed the missing FCC Form 1210. We find Operator's argument to be persuasive. Operator has not attempted to claim any adjustments that Operator is not entitled to claim under our regulations. The only question is whether Operator's filing was so untimely as to preclude Operator's claim. Because the record indicates that Operator did prepare the FCC Form 1210 in a timely manner and included its adjustments in its actual CPST rates in a timely manner, we find Operator's request to be reasonable. Upon review of Operator's FCC Form 1200 and subsequent filings, taking into account the additional FCC Form 1210, we find Operator's total overcharges for the period under review to be *de minimis*, and it would not be in the public interest to order refunds. Therefore, we modify the Prior Order to exclude any refund liability.

5. Accordingly, IT IS ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that the petition for reconsideration filed by Operator is GRANTED.

⁹ See Section 76.956 of the Commission's rules, 47 C.F.R. § 76.956.

¹⁰ See Section 76.957 of the Commission's rules, 47 C.F.R. § 76.957.

¹¹ See Section 76.922 of the Commission's rules, 47 C.F.R. § 76.922.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

6. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that *In The Matter of Jones Communications of Maryland, Inc.*, DA 98-1558, 13 FCC Rcd 17685 (CSB 1998) IS MODIFIED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau